

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FRACTUS, S.A.

Plaintiff,

VS.

**SAMSUNG ELECTRONICS CO., LTD.;
SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC; SAMSUNG
ELECTRONICS RESEARCH INSTITUTE;
SAMSUNG SEMICONDUCTOR EUROPE
GMBH; Defendants.**

Civil Action No. 6:13-cv-210

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff FRACTUS, S.A. files this Complaint against Defendant Samsung. Plaintiff FRACTUS, S.A. alleges:

THE PARTIES

1. Fractus, S.A. ("Fractus") is a foreign corporation duly organized and existing under the laws of Spain with its principal place of business in Barcelona, Spain.

2. Fractus is informed and believes, and on that basis alleges, that Defendant Samsung Electronics Co., Ltd is a foreign corporation organized and existing under the laws of Korea, with its principal place of business located at 250, 2-ga, Taepyong-ro, Jung-gu, Seoul 100-742, Korea. Fractus is informed and believes, and on that basis alleges, that Defendant Samsung Telecommunications America, LLC is a limited liability partnership organized and existing under the laws of the State of Delaware, with its principal place of business located at 1301 E. Lookout Drive, Richardson, Texas 75082. Fractus is informed and believes, and on that basis alleges, that Defendant Samsung Electronics Research Institute is a foreign corporation organized and existing under the laws of the United Kingdom, with its principal place of

business located at South Street, Staines, Middlesex TW18 4QE UK. Fractus is informed and believes, and on that basis alleges, that Defendant Samsung Semiconductor Europe GmbH is a foreign corporation organized and existing under the laws of Germany, with its principal place of business located at Am Kronberger Hang 6, Schwalbach, 65824 Germany. Samsung Electronics Co., Ltd., Samsung Telecommunications America, LLC, Samsung Electronics Research Institute, and Samsung Semiconductor Europe GmbH are referred to collectively herein as “Samsung.”

3. The parties have previously been the subject of an action in this Court, *Fractus S.A. v. Samsung Electronics Co., Ltd.*, No. 6:09-cv-203 (the “Prior Litigation”), in which Fractus alleged that Samsung infringed the same four patents accused of infringement here. That case went to trial and on May 23, 2011 the jury found in favor of Fractus. The jury found that Samsung infringed the asserted claims in all four patents and that the infringement was willful. The jury also found that Samsung had not proven that the four patents were invalid. The jury awarded damages to Fractus in the amount of \$23,129,321. The District Court issued Final Judgment on June 28, 2012, denying Samsung’s post-trial motions and awarding Fractus an additional \$15,000,000 in enhanced damages for Samsung’s willful infringement, as well as pre-judgment and post-judgment interest. The District Court later amended its final judgment and ordered that Samsung pay an ongoing royalty rate of \$0.60 per phone on all adjudicated phones. Fractus incorporates its infringement positions in the Prior Litigation by reference.

4. The District Court also denied Fractus’s request to include non-adjudicated phones in the ongoing royalty rate, without prejudice to Fractus bringing another action on non-adjudicated phones or later arguing that an ongoing royalty should apply to any non-adjudicated phones because they are not colorably different from the accused phones.

JURISDICTION AND VENUE

5. The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* Venue is proper in this federal district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) in

that Samsung has done business in this District, has committed acts of infringement in this District, and continues to commit acts of infringement in this District, entitling Fractus to relief. There is also no clearly more convenient venue.

INFRINGEMENT OF U.S. PATENT NO. 7,015,868

6. Fractus incorporates paragraphs 1-5 of this Complaint by reference.

7. On March 21, 2006, United States Patent No. 7,015,868 (the “’868 patent”) was duly and legally issued for an invention entitled “Multilevel Antennae.” Fractus was assigned the ’868 patent and continues to hold all rights and interest in the ’868 patent. A true and correct copy of the ’868 patent is attached hereto as Exhibit A.

8. Samsung has infringed and continues to infringe the ’868 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal multiband antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. Samsung is liable for its infringement of the ’868 patent pursuant to 35 U.S.C. § 271.

9. Samsung’s acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Samsung the damages sustained by Fractus as a result of Samsung’s wrongful acts in an amount subject to proof at trial. Samsung’s infringement of Fractus’s exclusive rights under the ’868 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

INFRINGEMENT OF U.S. PATENT NO. 7,123,208

10. Fractus incorporates paragraphs 1-9 of this Complaint by reference.

11. On October 17, 2006, United States Patent No. 7,123,208 (the “’208 patent”) was duly and legally issued for an invention entitled “Multilevel Antennae.” Fractus was assigned the ’208 patent and continues to hold all rights and interest in the ’208 patent. A true and correct copy of the ’208 patent is attached hereto as Exhibit B.

12. Samsung has infringed and continues to infringe the ’208 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited

to certain mobile phones with internal multiband antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. Samsung is liable for its infringement of the '208 patent pursuant to 35 U.S.C. § 271.

13. Samsung's acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Samsung the damages sustained by Fractus as a result of Samsung's wrongful acts in an amount subject to proof at trial. Samsung's infringement of Fractus's exclusive rights under the '208 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

INFRINGEMENT OF U.S. PATENT NO. 7,394,432

14. Fractus incorporates paragraphs 1-13 of this Complaint by reference.

15. On July 1, 2008, United States Patent No. 7,394,432 (the "'432 patent'") was duly and legally issued for an invention entitled "Multilevel Antenna." Fractus was assigned the '432 patent and continues to hold all rights and interest in the '432 patent. A true and correct copy of the '432 patent is attached hereto as Exhibit C.

16. Samsung has infringed and continues to infringe the '432 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal multiband antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. Samsung is liable for its infringement of the '432 patent pursuant to 35 U.S.C. § 271.

17. Samsung's acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Samsung the damages sustained by Fractus as a result of Samsung's wrongful acts in an amount subject to proof at trial. Samsung's infringement of Fractus's exclusive rights under the '432 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

INFRINGEMENT OF U.S. PATENT NO. 7,397,431

18. Fractus incorporates paragraphs 1-17 of this Complaint by reference.

19. On July 8, 2008, United States Patent No. 7,397,431 (the “431 patent”) was duly and legally issued for an invention entitled “Multilevel Antennae.” Fractus was assigned the '431 patent and continues to hold all rights and interest in the '431 patent. A true and correct copy of the '431 patent is attached hereto as Exhibit D.

20. Samsung has infringed and continues to infringe the '431 patent by its manufacture, use, sale, importation, and/or offer for sale of its products, including but not limited to certain mobile phones with internal multiband antennas, and its contributing to and inducement of others to manufacture, use, sell, import, and/or offer for sale infringing products. Samsung is liable for its infringement of the '431 patent pursuant to 35 U.S.C. § 271.

21. Samsung’s acts of infringement have caused damage to Fractus, and Fractus is entitled to recover from Samsung the damages sustained by Fractus as a result of Samsung’s wrongful acts in an amount subject to proof at trial. Samsung’s infringement of Fractus’s exclusive rights under the '431 patent will continue to damage Fractus, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

WILLFUL INFRINGEMENT

22. Upon information and belief, Samsung’s infringement of any or all of the above-named patents is willful and deliberate, entitling Fractus to increased damages under 35 U.S.C. § 284 and to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fractus S.A., requests entry of judgment in its favor and against Samsung as follows:

- a) Declaration that Samsung has infringed U.S. Patent Nos. 7,015,868; 7,123,208; 7,394,432; and 7,397,431;
- b) Permanently enjoining Samsung, its respective officers, agents, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent Nos. 7,015,868; 7,123,208; 7,394,432; and 7,397,431;

- c) Awarding the damages arising out of Samsung's infringement of U.S. Patent Nos. 7,015,868; 7,123,208; 7,394,432; and 7,397,431, including enhanced damages pursuant to 35 U.S.C. § 284, to Fractus S.A., together with prejudgment and post-judgment interest, in an amount according to proof;
- d) An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- e) For such other costs and further relief as the Court may deem just and proper.

DATED: February 28, 2013

Respectfully submitted,

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